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## NOTES

ACTIONS—WHAT CONSTITUTES A SUIT—PENNSYLVANIA ACT OF JUNE 8, 1893—ACTIONS BETWEEN HUSBAND AND WIFE—Just what is a suit by a wife against her husband? It is pretty well settled under the statutes and decisions of our various States, what classes of actions are maintainable by a wife againse her spouse and *vice versa;* but as to what constitutes a suit or action, there is quite a diversity of opinion and not a little questionable reasoning.

The Married Persons' Property Act of 1893,[1] in Pennsylvania, provides that a married woman "may not sue her husband except in a proceeding for divorce, or in a proceeding to protect or recover her separate property, etc." In the case of *Harwood* v. *Harwood*[2] recently decided by the Supreme Court of Pennsylvania, the husband had given his wife a judgment note for $3,000. By virtue of the warrant of attorney contained in the note, she entered up judgment against him on the Court's docket. The Court held

[1] Pa. Act June 8, 1893, P. L. 344, Section 3.
[2] 235 Pa. 532 (1912).

that this was not a suit and therefore not prohibited by the Act of 1893. Says Mr. Justice Stewart, "This qualification was simply a retention of so much of the disability imposed by the common law as was thought necessary to protect the peace of the domestic relation." But by what standard shall a Court of Justice be guided in determining what will and what will not preserve domestic tranquillity? Only by the particular circumstances of each individual case. No hard and fast rules can be laid down. Let us take this very case. The Court says in substance that the mere entering up of judgment against one's husband for three thousand dollars is not an act calculated to disturb the peaceful relations of the home. But there would seem to be a contradiction of this attitude in the very fact that the case is now before the Supreme Court for determination, having been fought through the lower Courts. And the very report of the case shows that "subsequently (*i. e.*, after entering up the judgment) she separated from him."

The legislature saw fit to allow a wife to sue her husband in only two specified instances, of which this was not one. Why should the Court, by putting a forced construction upon what is a suit, extend the permission to a case which the Act of Assembly does not embrace? The Court, in our principal case, says, "The conclusion is irresistible that when the legislature declared that a married woman 'may not sue her husband,' the prohibition had regard to adverse proceedings where the party complained against by legal process is brought into a Court of justice to answer. A voluntary confessed judgment is not adverse, and therefore not within the prohibition." This line of reasoning is, at least, questionable in the light of some of the cases that have attempted to define a suit.

The leading case on this phase of the situation in America is *Cohens* v. *Virginia* in the United States Supreme Court.[3] There, Chief Justice Marshall summarizes the legal conception of a suit. "What is a suit? We understand it to be the prosecution or pursuit of some claim, demand or request. In law language, it is the prosecution of some demand in a Court of justice. . . . The instruments whereby this remedy is obtained are a diversity of suits and actions which are defined to be the lawful demand of one's right. . . . They are all cases where the party suing claims to obtain something to which he has a right."[4] An Illinois authority[5] has it that "the meaning of the word 'suit' in a legal sense is an attempt to gain an end by legal process." In that case, one of the points to be determined was whether the issuing of execution upon a judgment was a "suit," and the Court decided that it was. There would be difficulty in finding a case more nearly like our

[3] 6 Wheaton 264 (1821).
[4] Cohens v. Virginia, 6 Wheat. 264, at P. 407.
[5] Dobbins v. First National Bank, 112 Ill. 553 (1885) at P. 566. Vanderveer v. Conover, 16 N. J. Law, 487 (1838).

principal case than this and yet the conclusions reached are logically contrary.

The better opinion seems to be that the term "suit" is a very comprehensive one applying to any proceeding in a Court of Justice by which an individual pursues that remedy which the law affords him.[6] There are numerous instances in the books of proceedings which are technically, and upon good legal reasoning, known as "suits," but which are not necessarily adverse and frequently are not so in fact. It has been held that the application of a poor debtor before a Master in Chancery to be admitted to the poor debtor's oath (a statutory proceeding in Massachusetts in the nature of bankruptcy), is a civil suit.[7] A petition for partition of lands and subsequent proceedings have been held a suit.[8] Condemnation proceedings have repeatedly been held "suits" under various statutes;[9] as have also proceedings to establish a drain,[10] and petitions for the laying out of highways.[11] An application to a probate Court for an assignment of dower to a widow is a "suit" within the statute of limitations of Alabama.[12] Surely such an action is not "adverse." The case of *Haven v. Hilliard*[13] in Massachusetts determined that "a proceeding in the Probate Court, seeking the proof and establishment of a will of lands, is a suit at law." Mandamus,[14] *certiori*,[15] and *habeas corpus*[16] are all suits at law.

*J. F. N.*

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BANKS—IS A BANK A HOLDER IN DUE COURSE OF PAPER DEPOSITED?—What is the relation between a bank and its depositor? Is it one of debtorship, or of agency? These questions are primarily for the jury to determine from the evidence adduced. Either relation may exist; the former is the more frequent. Oftentimes, however, the parties have no express agreement and there is nothing to determine their status other than the circumstances surrounding the deposit. When money is deposited, there is very seldom room for doubt, except in those few isolated cases of an express bailment of a specific sum of money. When the doubt does arise, it is in that class of cases

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[6] See Words and Phrases, Vol. 7, Page 6769 and cases there cited, and also 37 Cyc. 523, note 22.

[7] In the Matter of William A. Jenckes, 6 R. I. 18 (1859).

[8] Callen v. Ellison, 13 Ohio St. 446 (1862).

[9] City of Marion v. Granby, 68 Iowa, 142 (1885); Searl v. School District No. 2, 124 U. S. 197 (1887).

[10] In re The Jarnecke Ditch, 69 Fed. 161 (1895).

[11] Hyde Park v. Wiggin, 157 Mass. 94 (1892); Dunn v. Town of Pownall, 65 Vt. 116 (1893).

[12] Farmer v. Ray, 42 Ala. 125 (1868).

[13] 40 Mass. 10 (1839) at P. 19.

[14] In re Sloan, 5 New Mex., 590 (1891); Mayor of Roodhouse v. Briggs, 194 Ill., 435 (1902) at P. 437.

[15] Kendrix v. Kellogg, 32 Ga. 435 (1861) at P. 437.

[16] Holmes v. Jennison, 39 U. S. 540 (1840).